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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 828

ANITA S. BROTHMAN, GARY S. ROTHBERGER, TOMMIE L. SUBER, DAVID L. BLOOM, WILLIAM C. AYERS, DAVID J. BERNSTEIN, DOUGLAS S. CHAPMAN, DAVID N. SMOKLER, ROBERT M. MEIER, SAMUEL R. FRIEDMAN, THOMAS F. ZIMMERMAN, ALAN H. JONES, LAURIE L. LIPSON, THOMAS F. MAYER, JOSEPH P. GAUGHN, PETER WOLFF, FRANCIS M. LIPTON, JOHN L. RAYNOR, EDWARD I. GEFFNER, ERIC T. CHESTER, GEORGE E. STEINITZ, PATRICK W. MURPHY, RICHARD A SHORTT, JEREMY J. LUSTIG, RICHARD P. GORDON, ALAN M. VALUSEK, PAUL H. KANTER and MICHAEL D. LOCKER,
Petitioners,
v.
THE PEOPLE OF THE STATE OF MICHIGAN,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MICHIGAN

BRIEF FOR RESPONDENT IN OPPOSITION

OFFICE OF THE PROSECUTING ATTORNEY IN AND FOR WASHTENAW COUNTY, STATE OF MICHIGAN,
By: THOMAS F. SHEA,
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Ann Arbor, Michigan,
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Interstate Brief & Record Co., 356 E. Congress St., Detroit, Michigan 48226
WO. 2-8745—WO. 2-8732

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OPINIONS BELOW

The opinions below are adequately set forth in the petition.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED

Does application of the Michigan Trespass Statute to persons conducting an after closing time sit-in protest in a Selective Service System office unconstitutionally abridge the First Amendment rights of such persons?

CONSTITUTIONAL PROVISIONS AND STATE STATUTE

The federal constitutional provisions and state statute are adequately set forth in the Petition.

STATEMENT OF THE CASE

On March 13, 1962, the United States of America entered into a lease with John C. Fritz whereby the United States of America leased approximately 824 square feet of space contained in Rooms 209-212 on the second floor of the Fritz Building located at Liberty and Main Streets, Ann Arbor, Michigan, which lease was in full force and effect on October 15, 1965 (Ex. 1, Tr. pp. 42, 43). The space which was subject to said lease was allocated to the Selective Service System which maintained confidential records

for approximately 13,000 young people of the community in said office. On October 15, 1965, Lt. Col. Robert W. Lundquist, Chief of the Operation Section of State Headquarters of the Selective Service System came to aforesaid Ann Arbor office of the Selective Service System as senior officer in charge on that day. The normal closing hour for the Ann Arbor Selective Service System office, which was 5 o'clock, was delayed to 6 o'clock because 39 people were sitting in the reception area of said office. At approximately 6 o'clock in the evening of October 15, 1965, Lt. Col. Lundquist read the State Trespass Law to such persons. The proceedings were recorded on tape by Detective Sgt. Ronald Donaldson (Tr. p. 60) which recording, up to the point of the arrest, was admitted into evidence as People's Exhibit No. 36 (Tr. p. 67). A transcript of the parties of said tape recording that was admitted into evidence and heard by the jury contained the following colloquy:

> "As some of you probably know, I am Deputy Chief Krasney, Assistant Chief of Police in Ann Arbor. It is exactly 6 o'clock, according to my watch. I have talked to you before as to what you can expect to transpire.
>
> "We have with us a few people who are with the press. Those of you who do not show proper press credentials of course, will have to go along with you and if they don't and they decide to be involved in this situation, they will probably have to be taken right over to County Jail.
>
> "We have Mr. Gardner here who is a representative of the University of Michigan, the Office of Student Affairs. He is here for your benefit. We have with us Mr. Milton Brown—he is here somewhere; back there in the corner is our Assistant Human Relations Director, he is connected with the City. We have Col. Lundquist here, who is with the Selective Service Board.

"As you have been told, the building is officially closed at 6 p.m., you are in violation of the State Law of Trespass which Col. Lundquist will read to you. After your refusal, if this should be the case, to leave you will be escorted, gently, out of here and placed in a patrol wagon and you will be taken immediately to the County Jail; at which time the Sheriff and our department will take care of the necessary paper work which is required by law. We will make every reasonable effort to have complaints signed tonight, warrants drawn up and possible arraignments before the Municipal Judge. This means that if you should have reason to want to get out, you may post bond either at the jail or somebody can post it at our office. You may take the opportunity to enter a plea either of guilty or not guilty before the judge. This is your prerogative. I am going to, at this time, turn you over to Col. Lundquist who is going to read to you the formal State law which spells out exactly what you are doing wrong. After he finishes, we are going to give you exactly five minutes grace and at that time Mr. Burke, who is the representative of the owner and has power of attorney, to order you to evacuate and five minutes after that you will be carried from the building one at a time. Any questions?"

Col. Lundquist:

"I am Lt. Col. Robert Lundquist, Operations Officer from the State Headquarters of Selective Service. I am in charge of the office at this time. It is now 6 o'clock, which is an hour past our closing time, and so I am going to declare the office officially closed. Before I do that, however, I want to read a section of the State law for your information. This is concerned with the entry upon lands of another after having been forbidden to do so, refusal to depart therefrom.

"'Any person who shall wilfully enter upon the lands or premises of another without lawful authority, after having been forbidden to do so by the owner or occupant, agent or servant of the owner or occupant, or any person being upon the land or premises of another upon being notified to depart therefrom by the owner or occupant, the agent or service of another, who, without lawful authority, neglects or refuses to depart therefrom, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in the County Jail for not more than thirty (30) days or by a fine of not more than $50, or both, in the discretion of the Court.'

"Therefore, I declare the office officially closed at 6 o'clock and am ordering you to leave the office." (At this point the Defendants began singing "We shall not be moved (until the war is over)". After which they sang "We shall overcome" for approximately five minutes).

"If we can have your attention, I will again identify myself as Deputy Chief Krasney of the Police Department. At this time I am going to inform you that you are all officially under arrest for violation of the Trespass Law in the area of the Selective Service Headquarters. At this time, I am going to introduce to you Mr. Louis Burke who has the power of attorney for Mr. John Quick who is the owner of the building here, to order your evacuation from this building. Anybody who does not leave is going to be taken from the building and those who want to leave or desire to leave may do so at any time without your arrest being effected. Now, this is Mr. Lewis Burke. The gentleman here and he will again explain to you what the policy is as far as the owner of the building is concerned."

Mr. Burke begins to speak. . . .

End of tape

ARGUMENT

Petitioners contend, in substance, that their First Amendment rights were unconstitutionally abridged by application of the Michigan Trespass Statute to their after closing time sit-in protest in the reception area of the Selective Service System office in the City of Ann Arbor, Michigan.

In answer thereto the Respondent states that the Michigan Trespass Statute is a precise and narrowly drawn regulatory statute which provides that certain specific conduct be limited or proscribed. It is not so broad and all embracing as to jeopardize freedom of speech, press, assembly and petition. It is aimed at conduct of a limited kind; that is for persons who wilfully enter upon premises of another without lawful authority after having been forbidden to do so and for persons who without lawful authority neglect or refuse to depart from the premises of another after being notified to depart therefrom by the owner or occupant or the agent or servant of either.

Petitioners in the instant case were charged with a violation of the Michigan Trespass Statute as a result of their refusal to depart from the premises of the Selective Service System office in the city of Ann Arbor, Michigan, after being notified to depart therefrom by Lt. Col. Lundquist, an agent or servant of the occupant. It should be noted that this was not a protest by silent and reproachful presence in a place where the protestants *had every right to be* such as in *Brown v. Louisiana*, 382 U.S. 131. Petitioners had no right to be in the reception area of the Selective Service System office one hour after closing time. It certainly cannot be said that it was proper for petitioners to use such reception area after closing time to air grievances.

Recently this Court upheld the application of a state trespass statute to protestants that refused to obey a sheriff's order to remove themselves from what amounted to the curtilage of a jailhouse. *Adderley v. Florida,* 385 U.S. 39,

In *Adderley* this Court stated:

> "Nothing in the Constitution of the United States prevents Florida from even-handed enforcement of its general trespass statute. . . . The State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated. For this reason there is no merit to the petitioners' argument that they had a constitutional right to stay on the property, over the jail custodian's objections, because this area chosen for the peaceful civil rights demonstration was not only 'reasonable' but also particularly appropriate . . . . Such an argument has as its major unarticulated premise the assumption that people who want to propagandize protests or views have a constitutional right to do so whenever and however and wherever they please. That concept of constitutional law was vigorously and forthrightfully rejected in two of the cases petitioners rely on, *Cox v. Louisiana, supra,* 379 US at 554-555 and 563-564, 13 L ed 2d at 484 and 491, 492. We reject it again."

Freedom of speech therefore does not include a freedom to trespass. Nor does it include a right to propangandize views whenever and wherever one pleases. Thus, petitioners' contention that they have a First Amendment Constitutional right to refuse to leave the Selective Service System office when directed to do so by a Selective Service System official approximately one hour after the closing hour for said office, is clearly without merit.

Respondent submits that in light of *Adderley, supra,* this petition for writ of certiorari presents no federal question of substance that has not heretofore been determined by this Court.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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December 21, 1967.